

Voting by Residents of Nursing Facilities and Assisted Living Facilities

“At present, 1.6 million people in the United States live in nursing facilities, the majority of whom have dementia; and the number of persons living in long-term care facilities, such as assisted living is growing rapidly. In addition, the nation possesses many citizens diagnosed with psychiatric disorders who reside in institutional settings. The laws shaping the political rights of these citizens vary from state to state and often impose restrictions that may not be appropriate. Further, whether and how residents of such facilities actually vote depends in part on the decisions of staff, who often receive little guidance on the criteria that govern the exercise of political rights for patients.”¹

With the upcoming state election, this seems like an interesting and timely subject to review. Therefore, the following information provides a brief overview of some of the reports and research undertaken on this topic.

On September 15, 2004, the Journal of the American Medical Association (JAMA) published an article entitled, “Addressing the Ethical, Legal, and Social Issues Raised by Voting by Persons with Dementia.” The article addresses an emerging policy problem in the United States participation in the electoral process by citizens with dementia (Karlavish, et al, 2004). The authors point to the current lack of guidance for family caregivers, health-care professionals, and long-term care staff to help them decide whether people with dementia should be precluded from, or assisted in voting.

In this same issue of JAMA, an article, “Developing Practical Guidelines for Voting by Persons with Dementia” focused on three issues: the development of a method to assess capacity to vote; identification of appropriate kinds of assistance to enable persons with cognitive impairment to vote; and the development of uniform policies for voting in long-term care facilities. The article suggests that a person who understands the nature and effect of voting and can express a choice is competent to vote.

The subject was also being researched by Smith and Sabatino (2004). According to the authors, barriers to voting, such as ambulatory limitations, chronic illnesses, diminished capacity, and institutional isolation, encountered by frail older persons and persons with disabilities who are residents of long-term care facilities are often overlooked. Their study examined states’ efforts to accommodate voters who resident in long-term care facilities and other residential facilities for older persons and persons with disabilities. Results of the study identified twenty-three states, Colorado, Connecticut, Florida, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Missouri, Nebraska, Nevada, New York, Ohio, Oklahoma, Rhode Island, South Dakota,

¹ National Research Commission on Elections and Voting (2005). “Challenges Facing the American Electoral System: Research Priorities for the Social Sciences.

Tennessee, Washington, West Virginia, and Wisconsin, as having absentee voting procedures expressly addressing residents of long-term care facilities.

The study identified Maryland as having a procedure which embodies many of the key elements of an ideal model including placing responsibility on local election boards to initiate the outreach procedure, applying to all nursing facilities and assisted living facilities, and supporting all phases of the voting process. However, the study also points to one key element that is missing from Maryland as well as other states' procedures which is their failure to address some of the practical needs of the residents. For example, most of these states require residents to initiate the process. Residents may not be aware of the election and may not know that they can vote by absentee ballot. Smith and Sabatino (2004) also point to the model's failure to address voter registration and absentee ballot application as another shortcoming. Finally, none of the protocols identified in the study addressed the issue of capacity to vote. The authors indicated that they were not aware of any regulatory guidelines that addressed the issue of what capacity is needed to vote.

The Alzheimer's Disease Center at the University of Pennsylvania created the Dementia Voting Project. The goal of the project is to identify and address the ethical, legal, political, medical, and practical issues regarding the rights and abilities of individuals with dementia to vote. To achieve this goal, a multidisciplinary group of experts in ethics, geriatrics, government, law, neurology, law, and psychiatry were assembled to help define the dimensions of the issue and develop consensus guidelines for policy and future research. One result of the project is the operationalization of an instrument called the CAT-V (Competency Assessment Tool for Voting). At present, the instrument is being tested for reliability and validity in persons with mild to severe stage Alzheimer's disease. Based on the research so far, it appears that the CAT-V may have some utility for screening voting capacity in long-term care settings.

Portions of this article were also excerpted from the following sources:

Karlawish, J., et.al. 2004. "Addressing the Ethical, Legal, and Social Issues Raised by Voting by Persons with Dementia". JAMA, 292:1345-1350.

Smith, A. and C. Sabatino. (2004). "Voting by Residents of Nursing Homes and Assisted Living Facilities: State Law Accommodations". Washington, D.C.: American Bar Association Commission on Law and Aging.

www.uphs.upenn.edu/ADC/news/voting_age%20requirements.htm

Exercise your right to vote. Absentee voting provides a means for qualified voters to participate in upcoming elections even though they may not be able to go to the polls on Election Day. For further information, contact your local election officer or visit www.sbe.state.va.us